IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 2905 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? - No

2. To be referred to the Reporter or not? - No

J

3. Whether Their Lordships wish to see the fair copy of the judgement? - No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?- No

5. Whether it is to be circulated to the Civil Judge? -No

JAGDISHBHAI JIVABHAI CHHASIYA

Versus

STATE OF GUJARAT

Appearance:

MS SHILPA R SHAH for Petitioner

MR KC SHAH, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 19/03/96

ORAL JUDGEMENT

The question to be raised in the present Criminal Revision Application appears to be fully covered. This would call for the allowing of the present Revision Application.

The present petitioner is the original

complainant. He had filed the First Information Report before the Dhandhuka Police Station, for the alleged commission of the offences punishable under Sections 302, 323, 504 and 161 read with Section 114 of IPC and under Sections 3 and 10 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. After filing the FIR, the petitioner had a grievance that, the investigation was not being carried out in a proper manner and, therefore, he had approached this Court. By the speaking orders, this Court had directed that, the investigation should be taken over by the State CID (Crimes). Accordingly, PI Mr.Raijada had taken over and had carried out the investigation. Ultimately, he had filed C-Summary report before the learned JMFC, Dhandhuka. The said Court had transmitted the papers to the Special Court, Ahmedabad (Rural), by the orders dated September 19, 1995. When the matter came up before the Special Court, the Court had proposed and had also ordered to issue notices to the Prosecutor, the complainant and the accused persons. This came to be done, vide orders dated January 7, 1995. The complainant had, later on, submitted the written application raising a preliminary objection that, the so-called accused had no locus-standi while hearing the C-Summary report being presented by the investigating agency. This application came to be rejected by the Special Court, Ahmedabad (Rural), vide the orders dated September 21, 1995. The said orders are in challenge before me, in the present Criminal Revision Application.

The Special Court has partly accepted the case of the petitioner, by saying that, ordinarily, in such matters, while hearing the C-Summary report submitted by the investigating agency, the persons who are arrayed as the accused persons in the FIR, have no locus and as they have no standing before the Court, they are not required to be heard. Anyhow, the distinction is sought to be drawn on a parity of reasoning which does not appear to be sufficient, the Special Court says that, this is not a case in which the so-called accused persons demanded a right of hearing, but the Court itself feels that, it would be proper to do so. One more reason assigned by the Special Court is that, if after hearing the other side, there is a decision to pass the orders in one way or the other, the presence of the accused persons before the Court would be able to eliminate the delay in criminal proceedings. Anyhow, ultimately, in the operative orders, the application given by the complainant, has been rejected.

It appears very clearly that, the said orders are

not in consonance with the settled legal position. Learned Counsel Ms. Shilpa Shah, who appears on behalf of the petitioner draws my attention to a decision of this Court in PANATAR ARVINDBHAI RATILAL v. STATE OF GUJARAT AND ORS., 32(2) GLR 451. It was, indeed, a case in which there was an order to hold the inquiry under Section 156(3) of the Code of Criminal Procedure, 1973. I am conscious that, here, in the present Revision, I am concerned with a case in which the investigation was handed over, ultimately, to the State CID (Crimes). The principle enunciated by this Court in case of PANATAR ARVINDBHAI RATILAL (supra) is that, at such a juncture, where the C-Summary report is being heard, the accused persons have no locus to appear before the Court. The Court has, rightly, pointed out that, allowing the so-called accused persons to appear before the Court and to have their say, would amount to granting of a premature hearing to them and that the accused persons would be getting a pre-trial hearing as well as a post-trial hearing in the case. The Apex Court has also accepted this principle in SMT. NAGAWWA, APPELLANT v. VEERANNA SHIVALINGAPPA KONJALGI AND OTHERS, RESPONDENTS, AIR 1976 S.C. 1947. The Supreme Court has pointed out that, at the stage of issuing the process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused or not. The Supreme Court points out with great pertinence that, the scope of inquiry under Section 202 is extremely limited and that the only ascertainment of the truth or falsehood of the allegation made in the complaint should be on the basis of the material placed by the complainant before the Court and that for the limited purpose, the Court can examine the same with a view to find out as to whether a prima facie case for the issuance of the process has been made out or not. This should be done, the Supreme Court proceeds to say further by and after hearing the complainant, without at all, adverting to any defence that the accused might have in the case.

The settled legal position, therefore, is that, while considering the C-Summary report submitted by the investigating agency, the so-called accused persons have neither locus nor the standing before the Court and they cannot be heard. There was an effort on the part of learned Government Counsel Mr. Shah to urge before me that, if the Court wanted to do the same because of its own discretion, I should not interfere in exercise of the said discretion, in the present Criminal Revision Application in which I have got a limited scope. The

contention cannot be countenanced, for the simple reason that, a judicial discretion cannot be exercised against or in violation of or in militation of the settled legal position. The argument advanced by the Court below in support of the contention that, calling the accused persons before the Court would result in elimination of delay, does not appear to be sound. That cannot be done for any reason whatsoever, if the same is prohibited under law.

In view of this, the present Criminal Revision Application requires to be allowed and the same is hereby accordingly allowed. The orders under challenge are hereby quashed and set aside. The resultant effect would be that, the Court below shall have to decide the C-Summary report, after hearing the complainant and the investigating agency. The Rule is made absolute accordingly.

****